IN THE HIGH COURT OF DELHI

FAO No.797/2003

Ester Industries Ltd. ..... Appellant
! through: Mr.Anil K. Kher, Sr. Advocate with Mr.P.K.Mohapatra, Advocate.

VERSUS

$ Vasudevaya Text Pvt. Ltd. & Anr. ..... Respondents
^ through: Mr.Rikky Gupta, Advocate.

% DATE OF DECISION: 13.11.2007

CORAM:

* **Hon'ble Mr.Justice Pradeep Nandrajog**

1. Whether reporters of local papers may be allowed to see the judgment? Y

2. To be referred to the Reporter or not? Y

3. Whether judgment should be reported in Digest? Y

: **PRADEEP NANDRAJOG, J. (Oral)**

1. Vide impugned order dated 30.8.2003, holding that courts at Delhi lacked territorial jurisdiction to entertain the plaint, the same has been ordered to be returned.

2. It is urged by learned counsel for the petitioner (plaintiff) that in view of the specific averments made in para 5 and 6 of the plaint it could not be said that no cause of action had accrued to the plaintiff to institute the suit at Delhi.

3. After going through the pleadings of the parties and admitted documents filed by the plaintiff learned Trial Court has opined that no part of cause of action has accrued at Delhi.

4. Para 5 and 6 of the plaint which are relied upon by learned counsel for the petitioner at the hearing today read as under :-

> "5. That in the month of August 2000 the Defendant No.1 approached the Defendant No.2 for purchase of Filament Yarn manufactured by the Plaintiff and the Defendant No.1 and 2 placed an order for supply of 3409.930 Kgs. of Catonic Polyster Filament Yarn to the Defendant No.1.
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> 6. That as per the instructions received from the Defendants, the Plaintiff supplied the material, i.e. 3409.930 kgs. Of 80 x 24 Catonic Polyster Filament Yarn to the Defendants. The Plaintiff raised its invoice No.E00/SUR/1103 dated 19th August 2000 for Rs.3,07,754/- and forwarded the same to the Defendant No.1 with a copy to the Defendant No.2.

5. A perusal of the plaint shows that in para 1 of the plaint it has been averred that the plaintiff is a company having its registered office in District Udham Singh Nagar, Uttar Pradesh and Head Office at Delhi. In para 2 it is stated that the plaintiff is a leading manufacturer of polyster yarn. In para 3 it is stated that plaintiff appointed defendant No.2 as one of its agent in Surat area. In para 4, salient features of the agency agreement between plaintiff and defendant No.2 have been

stated. Thereafter, averments have been made in paras 5 and 6, contents whereof have been noted here-in-above.

6. In para 7 of the plaint it is stated as under :-

> 7. That the said material was duly received by the Defendant No.1 and the amount of the invoice became due for payment by the Defendant No.1. The Defendant No.1, however, failed to make the payment of the said invoice. As a result, the amount of Rs.3,07,754/- still remained unpaid.

7. Thereafter, it is stated that since defendant No.1 failed to pay the money the suit was instituted.

8. Invoice dated 19.8.2000 referred to in para 6 of the plaint has been filed by the plaintiff and is at page 217 of the trial court record. The invoice clearly records that it pertains to Ester Industries Ltd., i.e. plaintiff and relates to its office at 303, Shree Shyam Chambers near J.K.Tower, Ring Road, Surat (Gujarat) and the godown at premises No.56-57, 59-61, UNN Shopping Estate, District Surat (Gujarat).

9. A meaningful reading of the plaint reveals and as is evident from the averments made in para 5 of the plaint that case projected is that defendant No.1 approached defendant No.2, the agent of the plaintiff for purchase of yarn manufactured by the plaintiff.

10. This obviously had to be in the city of Surat for the

reason both defendant No.1 and defendant No.2 have their offices only in Surat, meaning thereby, the offer and acceptance was at Gujarat. Plaintiff's agent, i.e. Defendant No.2 was acting on behalf of the plaintiff. Averments made in para 6 to the effect '*that as per instructions received from the defendants*' have to be understood with reference to averments made in para 5, meaning thereby, that when defendant No.1 placed order upon defendant No.2 who was acting as the agent of the plaintiff, defendant No.2 instructed the plaintiff to supply the goods. As stated in para 6 of the plaint, invoice dated 19.8.2000 was raised when goods were supplied.

11. As noted above, the invoice pertains to the office and godowns of the plaintiff in the State of Gujarat.

12. No doubt, in the invoice it is stated that disputes would be subject to jurisdiction of courts at Delhi but since parties cannot by consent confer jurisdiction upon a court not otherwise having jurisdiction and the law being that if more than one court has jurisdiction, by consent, parties can exclude jurisdiction of a court and exclusively vest jurisdiction in the other court; relevant clause in the invoice is of no avail to the plaintiff.

13. Entire cause of action has accrued in the State of Gujarat.

14. I find no infirmity in the impugned order.

15. The petition is dismissed.

16. Trial court record be returned forthwith.

November 13, 2007 **PRADEEP NANDRAJOG, J.**
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